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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

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In the Matter of	)	
	)	
Ameritech Operating Companies	)	
Tariff F.C.C. No. 2	)	
Transmittal No. 1312	)	
	)	
Nevada Bell Telephone Companies	)	
Tariff F.C.C. No. 1	)	
Transmittal No. 20	)	
	)	
Pacific Bell Telephone Company	)	**WC Docket No. 02-317**
Tariff F.C.C. No. 1	)	
Transmittal No. 77	)	
	)	
Southern New England Telephone Companies	)	
Tariff F.C.C. No. 39	)	
Transmittal No. 772	)	
	)	
Southwestern Bell Telephone Company	)	
Tariff F.C.C. No. 73	)	
Transmittal No. 2906	)	

SPRINT CORPORATION OPPOSITION TO DIRECT CASE

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OPPOSITION TO DIRECT CASE

Sprint Corporation hereby respectfully submits its opposition to the Direct Case filed by the SBC Communications Inc. on October **3** 1,2002, in response to the Order (DA 02-2577) of the Pricing Policy Division ("Division") of the Commission's Wireline Competition Bureau, released October 10,2002, in the above-captioned docket.

I. INTRODUCTION AND SUMMARY

SBC's proposed tariff revisions modifymg its criteria for security deposits filed on August 2,2002 in the above-captioned transmittals would expand significantly the bases on which it would be able to require deposits from its existing customers. SBC's

currently effective tariff language, which was prescribed by the Commission in its 1984 decision in CC Docket No. 83-1145 (Phase I),' requires that a deposit be made only by "a customer which has a proven history **of** late payments to the Telephone Company or does not have established credit." See, *e.g.*, Ameritech Operating Companies, Tariff F.C.C. No. 2, Section 2.4.1(A), 1st Revised Page 40. SBC's proposed revisions would afford it the right to require an existing customer to provide a security deposit, or alternatively, advance payments, even if the customer does not "have a proven history of late payments" or has "established credit," as long as the customer "has impaired credit worthiness" and "the customer's most recent interstate access bills from the SBC Telephone Companies total (including any outstanding balances) $1 million dollars or more." See, *e.g.*, Section 2.4.1(B) of Ameritech Operating Companies Tariff FCC No. 2, Original page 40.3.

SBC identifies five "situations" in which a customer has "impaired credit worthiness": (1) "if any debt securities of a customer or its parent...are below investment grade, as defined by the Securities and Exchange Commission"; (2) "if any debt securities of a customer or its parent are rated the lowest investment grade by a nationally recognized credit rating organization and are put on review by the rating organization for a possible downgrade"; **(3)** a customer without outstanding securities is rated as "fair" or below, or "high risk" in a Paydex score by Dun and Bradstreet; (4) the customer or its parent announces that "it is unable to pay its debts as such debts become due"; and *(5)* the customer or its parent is in receivership **or** bankruptcy (either voluntarily or involuntarily). See, *e.g.*, Section 2.4.1(A) of Ameritech Operating Companies Tariff

[1] *Investigation of Access and Divestiture Related Tariffs.* 97 FCC 2d 1082, 1169 (1984) ***(1984** Access Tariff Decision*).

FCC No. 2, Original Pages 40.2 and 40.3. In addition, SBC is proposing to significantly shorten the time **period** for paying bills from the current 30 days to 21 days for any customer with "impaired credit worthiness." ***See,*** *e.g.,* Section 2.5.3 of southwestern Bell Telephone Company Tariff FCC No. 73, 3rd Revised page 2-62.

By attempting to introduce these alternatives in its tariffs, SBC is seeking unfettered discretion over which customers will be required to transfer to SBC millions of dollars in deposits. Such discretion would enable SBC to violate the Section 202(a) proscription against unjust discrimination with impunity, as it will be able to pick and choose among its customers for the imposition of deposit requirements. Although many CLECs compete in the local exchange market, the market share of incumbent local exchange carriers (LECs) was 90 percent as of December **3** 1,2001.[2] Thus, because they are dependent on the LECs' networks to provide their services, access customers have little alternative but to take most of their interstate access services from the dominant access providers, such as SBC, and to comply with any deposit requirement imposed or **risk** discontinuance of service.

SBC is proposing its onerous deposit requirements as it is gaining Section 271 authorization to provide long distance service in many of its states. **Its** long distance affiliate is now competing vigorously against the interexchange carriers that are its access customers, and SBC competes as well with wireless carriers and competitive local exchange carriers that are also purchasers of access. **As** the dominant provider **of** access services, it has an incentive to raise barriers and costs to these competitors.

[2] Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, Local Telephone Competition: Status as of December 31.2001, July 2002, Table **6.**

To examine the lawfulness of the proposed provisions, the Division designated four issues for investigation and directed SBC to provide information related to each. As discussed below, SBC's Direct Case fails to demonstrate that its proposed revisions to its provisions for security deposits are not unjust and unreasonable, in violation of Section **201(b)** of the Act, or unreasonably discriminatory, in violation of Section 202(a) of the Act. (Issue 1) SBC's argument that price cap rates do not reflect its uncollectible risk fails in light of its consistently low percentage of uncollectibles – 0.5 % of its interstate revenues in **2001 –** and its high **2001** rate of return – **22.36 %. SBC,** which has not changed its collection policies during the last two years despite its alleged increase in uncollectibles, bas not demonstrated that its currently effective tariff provisions would not have substantially mitigated its uncollectible issue – to the extent there is one – had such provisions been exercised in a timely manner. Nor has SBC demonstrated that the ill-defined criteria it proposes would be a better predictor of the likelihood that a customer will pay it bills than the customer's payment history, or that it could not use such criteria to impose deposit requirements in a discriminatory manner.

SBC has also failed to demonstrate the reasonableness of its proposed reduction in the notice interval for the payment of bills by credit-impaired customers. (Issue **2)** The reduction of this interval from 30 days to **21** will not significantly decrease SBC's exposure, while it will be a hardship for its larger carrier-customers that must review massive bills that contain a substantial amount of errors. **SBC's** provisions for the refund of deposits are unreasonable because they do not provide for a periodic review or the return of a deposit after a year of timely payments. (Issue **3)** And despite **SBC's** claims to the contrary, nothing in the proposed revisions would exclude SBC's long-term pricing

plans from their scope. (Issue 4) SBC must demonstrate that it has substantial cause to change these long-term plans, which it has not done.

II. ANALYSIS OF THE ISSUES DESIGNATED FOR INVESTIGATION

A. Issue 1: Basis for Requiring a Deposit or Advance Payments From a Customer

The Division first calls upon SBC to "explain why it believes its rates under price caps do not adequately compensate it for the risk of uncollectibles." Order, ¶ 15. In response, SBC claims that the amount of uncollectibles used to establish the initial price caps were small and that the use of GDP-PI "significantly understates the impact that major economic changes to the telecommunications sector had on the uncollectibles of LECs." Direct Case, p. 5. SBC therefore concludes that its "rates under price cap do not accurately reflect its risk of uncollectibles." Id. The relative amounts of uncollectibles to total interstate access revenues, the appropriate measure to examine in this regard, show that SBC's uncollectibles have remained a fairly constant, and very low, percentage of its interstate access revenues since 1990.[3]

Year	Ameritech	Southwestern	SNET	Nevada	Pacific	SBC Total
1990	0.4%	0.4%	**0.1%**	**0.1%**	0.3%	**0.4%**
1991	0.5%	0.3%	0.5%	0.1%	0.2%	**0.4%**
1992	0.4%	0.3%	0.5%	0.3%	0.2%	**0.4%**
1993	0.5%	0.4%	0.3%	0.2%	0.2%	0.4%
1994	0.7%	0.3%	0.2%	0.2%	0.2%	0.4%
1995	0.3%	0.3%	0.2%	0.2%	0.2%	0.2%
1996	**0.6%**	0.3%	0.4%	0.2%	0.2%	0.4%
1997	0.3%	0.3%	0.9%	1.1%	**0.3%**	0.3%
1998	0.4%	0.3%	0.3%	0.4%	0.1%	0.3%
1999	0.2%	0.4%	0.3%	0.3%	0.2%	0.3%
2000	0.1%	0.8%	0.3%	0.2%	0.2%	0.3%
2001	0.1%	**1.1%**	0.5%	0.3%	0.2%	0.5%

Source: **ARMIS** Report 43-01

[3] The revenues corresponding to the uncollectible amounts provided by SBC and used to calculate the percentage of uncollectibles are attached as Exhibit 1.

The increase in SBC's uncollectible percentage in 2001 and 2002, which it posits "does not constitute a normal fluctuation, but rather an unprecedented trend in the telecommunications industry" (Direct Case, p. 7), reflect the "normal fluctuations" associated with a business cycle. In particular, an increase in bankruptcies and uncollectibles is normal when the economy experiences a significant downturn, such as the economic recession that began in March 2001, with the GDP contracting through the third quarter of 2001 and the trough in December 2001.[4] That period also witnessed the bursting of the Internet bubble and the demise of many Internet-related firms and their suppliers. And, the fraud committed by certain carriers that came to light this year and has resulted in such companies filing for protection under the bankruptcy laws is not – and cannot be considered – indicative of a new trend in the telecommunications industry. Further, the "telecommunications industry" includes many sectors other than the interstate access services provided by SBC at issue here, including equipment manufacturers, as well as Internet, cable, satellite and wireless service providers; and pessimistic outlooks about the whole industry do not necessarily apply equally to all sectors. The burden of proof is on SBC to demonstrate that the increases in its uncollectibles in 2001 and 2002 reflect a permanent structural change in the interexchange access market. This it has not done.

Unlike rate-of-return LECs which are permitted to earn an 11.25 percent rate of return, price cap LECs are afforded the opportunity to retain the profits they make in return for their assumption of risks associated with business fluctuations. SBC has

[4] Simon Wilkie, Chief Economist, Federal Communications Commission, Macroeconomic Perspective, Presentation at the FCC's ***en*** *banc* hearing, October 7,2002, Slide 2 entitled "Sizing the Recession."

profited handsomely from this opportunity and has increased its rate **of** return significantly from 1991 levels:

	1991	2001
Ameritech	13.44%	25.52%
Pacific Telesis	12.18%	23.26%
Southern New England Telephone	11.49%	23.19%
Southwestern Bell	11.39%	18.36%
SBC Communications, Inc.	12.28%	22.36%

Assuming that the recession and other one-time business events caused many of the telecommunications bankruptcies and associated uncollectibles, the rise in uncollectibles in 2001 and 2002 must be considered a business risk that appropriately should be absorbed by price cap companies.

The Division questions what changes should be made to SBC's "price cap indexes and service band indexes to account for these changes to the capital and risk parameters of price caps." Order, ¶ 15. SBC responds that it should be permitted to increase "the uncollectible levels embedded in price caps," as well as to make an exogenous adjustment to recover increased uncollectible expense. Direct Case, pp. 10-11. Not only are such changes unwarranted in view **of** SBC's healthy earnings, they **are** also beyond the scope of the tariff revisions here under investigation.

The tariff changes SBC has proposed impact its access customers in much the same way as an exogenous increase in access rates would because the proposed provisions require these customers to incur additional costs for a deposit **or** prepayment. Here the cost is associated with posting the security deposits, which must be "(1) a cash deposit, (2) an active, irrevocable, non-cancelable, confirmed bank letter **of** credit in favor of the Telephone Company, acceptable in form and substance to the Telephone

Company, or **(3)** a third party guaranty agreement acceptable in **form** and substance to the Telephone Company." See, *e.g.*, Ameritech Operating Companies Tariff F.C.C. No. 2, Section 2.4.1, Original Page 40.1. The alternative to a deposit, a prepayment, is "payable only in cash." Id. Companies face limits on the amount that financial institutions are willing to lend to them; and the more debt a company requires, the higher the cost will be. Thus, the requirement to post either cash or a bond equivalent to one month's access charges because SBC decides to declare that the "credit worthiness" of the customer is "impaired" will directly increase a company's expense associated with access charges.

The impact on SBC is also similar to an exogenous rate change. Although the proposed deposit requirement is not an overt increase in a particular access charge, it ensures that SBC's cost of uncollectibles, which is spread across all rate elements, will be reduced substantially. Any increase to date in uncollectibles has not had a major impact on SBC's rate of return, which has increased over 1100 basis points for Ameritech, Pacific Telesis and Southern New England Telephone, and just under 700 basis points for Southwestern Bell between 1991 and 2001. Thus, despite increases in uncollectibles, SBC's price cap earnings have risen substantially over the rate of return deemed adequate for non-price cap LECs, and any exogenous price cap change – direct or indirect – is unwarranted.

The Division requests information from SBC concerning "the total dollar amount of security deposits it holds that are attributable to interstate access services and the percentage relationship of that amount to average monthly interstate access billings." Order, ¶ 15. SBC's answer shows that the deposits it currently requires of its customers are negligible, under $1 million (Direct Case, p. 10), or less than 0.2 % of its average

monthly interstate access billings of $500 million. Id., p. 12. SBC fails to explain this extremely low percentage. The minimal amount of deposits suggests either that SBC's customers pay on time – and hence there is no real problem to be solved – or that SBC fails to require deposits from those who do not do so.

In order to "understand[] the increase in the level of uncollectibles," the Division **asks** SBC to identify "any changes in its billing an collection procedures or the accounting treatment of disputed amounts on bills within the past two years that could have affected the levels of uncollectibles." Order, ¶ 16. In response, SBC informs the Division that its procedures have not changed during the previous two years, during which time it asserts it experienced an increase in its uncollectibles. Direct Case, p. 11. SBC provides no information regarding its policies and procedures for requesting deposits from its customers. Thus, as suggested above, SBC may have failed to require deposits, as it legitimately may pursuant to its currently effective tariffs, from its customers that have a history of late payments or that have not demonstrated established credit. SBC states that its past due amounts for interstate access services provided to carriers were "$270 million at the end of 2000, $252 million at the end of 2001 and $285 million YTD for 2002." Direct Case, pp. 14-15. It would be reasonable to assume that some of these customers have what would qualify as "a proven history of late payments" and that a deposit could have been demanded. If that is the case, SBC's failure **to** exercise its rights under existing tariffs hardly justifies giving it greatly increased and anti-competitive powers to require deposits.

In order to evaluate whether different treatment should be afforded customers whose services are billed in advance, the Division asked SBC to provide the amount it bills in advance. Order, ¶ 17. SBC states that the percentage of billings that are billed in advance range from 85 % to 89 % and that the increase in its advance payments between 1999 and 2001 was between 10 % and 19 %. Direct Case, pp 13-14. Although SBC rejects the suggestion that services billed in advance should be treated differently than those billed in arrears, it is undeniable that, for services billed in advance of service, the lag between nonpayment and discontinuance of service is a month shorter than for services billed in arrears. Thus, SBC benefits from the growing percentage of its billings that are rendered in advance of service, further cushioning it from occasional increases in exposure to bad debt and rendering a change in the deposit provisions unnecessary.

The Division states that "SBC has not shown that the[] criteria [which define "impaired credit worthiness"] are valid predictors of the likelihood of a customer paying its access bill, or that they are better predictors of whether a customer will pay its bills in the future than the customer's past payment history" and directs SBC to provide an explanation. Order, ¶ 20. SBC asserts that "there are no studies directly relating credit impairment to ability to pay interstate access bills" (Direct Case, p. 21), and it makes no attempt to provide such a study or demonstrate why its criteria are "better predictors of whether a customer will pay its bills in the future than the customer's past payment history." Clearly, SBC has failed to sustain its burden ***of*** proof on the core issue of the reasonableness of its tariff provisions.

Two of the proposed criteria that would link the deposit requirement to the ratings of senior debt securities and that SBC has failed to justify **as** "valid predictors of whether a customer will pay its bills" in a timely manner are vague and will allow SBC to unreasonably discriminate against its customers. For example, SBC's proposed provision would permit it to require a deposit if the customer's senior debt securities are rated "below investment grade, as defined by the Securities and Exchange Commission" **or** "the lowest investment grade by a nationally recognized credit rating organization and are put on review by the rating organization for a possible downgrade." ***See,*** *e.g.,* Ameritech Tariff FCC No. 2, Original Page 40.2. SBC has not provided the Division with the Securities and Exchange Commission's definition of "below investment grade" to which it refers, so the Commission, interested parties and customers subjected to the definition have no way of knowing exactly what it means. In its Direct Case in WC Docket No. 02-317 filed October 29,2002, Verizon claimed that "investment grade" is "objectively defined, and even used in federal securities regulations. ***See,*** *e.g.,* 17 CFR § 240.3a1-1(b)(3)(v)." The definition of "investment grade" to which Verizon referred is as follows:

> Investment grade corporate debt securities, which shall mean any security that:
> (A) Evidences a liability of the issuer of such security;
> (B) Has a fixed maturity date that is at least one year following the date of issuance;
> (C) Is rated in one of the four highest ratings categories by at least one Nationally Recognized Statistical Ratings Organization; and
> (D) Is not an exempted security, as defined in section 3(a)(12) of the Act (15 U.S.C. 78c(a)(12)"

Rather than providing specific criteria to define "investment grades" for purposes of standardizing the rating of debt securities, the above simply refers to the rating of "Nationally Recognized Statistical Ratings Organizations," which are hardly objective.

BellSouth provided the credit scoring tools of two such organizations which make it abundantly clear that tools are customized by the user, rely on the inputs selected by the user, and produce different results based on the weightings set by the user. ***See*** BellSouth's Direct Case in WC Docket No. 02-304, filed on October 10,2002. Assuming that the tools used by the rating organizations are based on a similar methodology, the ratings are subjective, not objective.

In addition to being undefined, SBC's criteria would give undue credence to bond rating agencies at a time when they have been much quicker than they historically were to downgrade or put on review a company's bond ratings. Downgrades can occur for any number of reasons – because the company did not meet analysts' earnings expectations or because of a negative news item. The Financial Times recently reported that "investors perceive [rating agencies] have been too hasty with recent downgrades,"[5] and in an article in The Wall Street Journal, it was noted that "the fast-paced, fickle bond market can change its mind in an instant about a company's creditworthiness and how much to charge."[6] SBC seeks to capitalize on the current low ratings in the telecommunications industry to demand significant deposits from its captive competitors/customers.

Also troubling is the discretion the tariff language would give SBC to rely – or not to rely – on the ratings of "nationally recognized statistical rating organizations" to impose a deposit on a customer. Under the proposed tariff language, it could impose a

[5] Aline van Duyn, "Aggressive Downgrades Under Question: Bond Investors Are Concerned By The Apparent Changes in Rating Agencies Assessments." Financial Times, July 12,2002.
[6] Greg Ip, "Suddenly, Banks Are Acting a Lot Like Bond Markets." The Wall Street Journal, September 17,2002, page A1.

deposit requirement on Carrier A but not on Carrier B, even though each might have been rated "below investment grade" by one organization; alternatively, it could choose among rating organizations in order to find the lowest rating for each carrier. Plainly, SBC could use the proposed deposit language to discriminate among its customers, and it is abundantly clear that SBC reserves to itself the discretion **to** consider whatever information it chooses and weigh these various factors however it wants to decide whether or not to require a deposit from a customer under the proposed language.

The Division asks SBC to "explain what it means by 'total charges' and whether this term includes charges for disputed amounts or services not purchased out of its interstate access tariffs (e.g., intrastate services).'' Order, ¶ 22. SBC responds that disputed charges are included in a customer's total charges. Direct Case, p. ***26.*** And, in response to the Division's request for specific information about disputed amounts (Order, ¶ 16), SBC claims that only "a very small percentage of the total amount billed to carriers" is disputed. Direct Case, p. 12. This is counter to Sprint's experience with SBC's billing processes. For example, Sprint disputed over 10 percent of its SBC access charges for June 2002, and Sprint typically receives credit for approximately two-thirds of its disputed access charges (excluding amounts paid when additional information is provided to justify SBC's bills). With bills in the tens of millions of dollars, such disputed amounts are significant, and a great deal of resources must be devoted to reviewing SBC's bills, identifying the large numbers of errors, and requesting additional information. SBC's policy under which disputed amounts are included in a customer's unpaid balance and in SBC's review of a customer's monthly accounts is entirely unreasonable. Clearly, SBC should not be permitted to included disputed amounts in

determining a customer's unpaid balance; nor, in light of the large number of errors, should it be allowed to reduce the interval for review of its bills, as discussed in Issue 2 below.

Because SBC proposes to pay interest on customer deposits at a lower rate than its interest penalty on late payments, the Division directs SBC to "provide justification for the different interest amounts proposed here." Order, ¶ 23. SBC explains that "[t]he purpose of a late payment charge is, not just to compensate the assessor for the time value of money owed, but to also penalize customers who fail to pay their bills on time and to incent them to pay on time. ... Security deposits, on the other hand, operate solely to assure payment from carriers who pose a risk of non-payment." Direct Case, pp. 26-27, SBC therefore proposes to pay the one year Treasury Bill rate on deposits. ***See,*** *e.g.*, Ameritech Operating Companies Tariff F.C.C. No. 2, Section 2.4.1, Original Page 40.1. Unfortunately, there is no longer a one year Treasury Bill. The Investment Rate for the 26-week Treasury Bill at the Treasury's most recent auction, with an issue date of November 14, 2002, is 1.249%. ***See,*** Exhibit 2. Such a low rate seriously penalizes customers who could undoubtedly put their working capital to work at a significantly higher return. SBC should not be permitted to pay this unreasonably low rate, while charging customers a far higher rate for late payments. Rather, it would be far more equitable (and would avoid tracking the rate to an instrument that does not exist) if SBC were to pay the same interest rate on deposits as it requires on its late payments.

SBC makes no valid attempt to address the Division's questions regarding "the payment characteristics of defaulting interstate access customers during the year prior to the time the account was 90 days overdue" (Order, ¶ 25), claiming that any such analysis

would require complicated "manual aggregation of bills." Direct Case, p.28. Since SBC has only 35 carrier customers that meet its proposed $1 million threshold (id., p. 23), such analysis limited to "the year prior to the time the account was 90 days overdue" would not seem to be an unreasonable request. In contradiction to the alleged complexity, SBC states that it "reviews its customers' accounts monthly for unpaid balances and thus will be able to track if a customer has two late payments within a 12-month period." Direct Case, p. 25. Indeed, such information would be extremely helpful to the Commission in evaluating the reasonableness of SBC's proposed tariff revisions. Further, it would be very enlightening for the Commission to know how many of these 35 large carrier customers **do** not have "a prior history of late payments." Sprint is one such carrier in this group of 35, and no analysis of Sprint's payment history would be required. SBC's refusal to provide this obviously relevant analysis is yet another instance of its failure to sustain its burden of proof.

Finally, the Division requests information about the level and treatment of uncollectibles in other regulated industries. Order, ¶ *26)* SBC responds that "Southern LNG, a provider of liquefied natural gas, requires deposits 'in an amount equal to not more than three estimated maximum bills for service' from customers upon default in payment or who become insolvent." Direct Case, pp. 28-29, fn. omitted. It is telling that Southern LNG bases its deposit request on the "default in payment" or solvency of its customers, not on the vague criteria SBC proposes here.

B. Issue 2: Shortened Notice Period and Bill Payment Interval

The second issue the Division has designated for investigation concerns the reasonableness of the reduction in the payment interval from 30 to 21 days for credit-impaired customers. The shortening of the notice periods is unjust and unreasonable. Access bills, as discussed above, are massive and complicated, and customers should be provided adequate time to review them and identify amounts which they dispute or for which more justification from SBC is warranted. The reduction of the interval will not decrease significantly SBC's exposure to uncollectibles, while it will be a hardship for its larger carrier customers. In addition, the reduction in the interval is approximately equal to the time it takes SBC to send letters to customers who do not remit their payment by the bill due date.[7] SBC is seeking to penalize its customers rather than improving its own processes.

Further, the decrease in the bill payment interval will be costly to carriers, especially to those who are billed are tens of millions of dollars each month because interest on such monies must be foregone. Again, SBC is unjustly imposing costs on its largest customers, many of whom are its major competitors.

C. Issue 3: Refund of Deposits

The Division requests information to evaluate the reasonableness of SBC's proposed deposit refund provision. Unfortunately for the customer, the decision concerning whether or not **to** refund a deposit remains SBC's and will be based on the same vague and unreasonable criteria it proposes to initially require the deposit. Even if

[7] SBC states: "Within 10 days after the bill due date (31"– 40th day), SBC will send the customer a letter of refusal of service and discontinuance." Direct Case, p. 11.

the customer requests a refund after having demonstrated a prompt payment record and an improvement in its credit worthiness, SBC will continue to evaluate such deposit requirements which afford it complete discretion. Meanwhile, SBC's customers will have no way to predict when their deposits will be returned and available for revenue-generating projects. SBC's competitors, having no alternative for most of their access services, will have their working capital unavailable and thereby will be severely disadvantaged by the proposed deposit requirements. Absent a sound justification, which SBC has not provided, the Division should not permit SBC to retain deposits indefinitely.

D. Issue 4: Application of Revised Deposit Requirements to Term Plan Customers

SBC claims that its "tariff revisions affect only the general tariff sections and…do not modify the term or conditions of any SBC term plan." Direct Case, p. 33. However, Section 1 of Ameritech Operating Companies Tariff F.C.C. No. 2 states:

> This tariff contains regulations, rates and charges applicable to the provision of Carrier Common Line, End User Access, Switched Access and Special Access Services, Lifeline Assistance, Universal Service Fund, and other miscellaneous services, hereinafter referred to collectively as service(s), provided by the following Ameritech Operating Companies as issuing carriers…

The deposit provision is part of the "General Regulations" of the tariff, which apply to all services contained in the tariff, including the term plans. In order to avoid application of the "General Regulations," a particular service would have to specifically exclude their application. No such exclusion has been made for term plans. Thus, unless otherwise specified, the "General Regulations" applicable when the customer enters into the term plan should apply throughout the term. It would be unreasonable to assume that the customer is locked into a multi-year term plan with no option but to accept a carrier's

new, onerous requirements simply because such requirements are in a different section of the tariff. Clearly, the proposed deposit requirement will apply to term plans, and any change in the regulation must pass the "substantial cause" test.

In considering whether or not a carrier has "substantial cause" to make revisions to its long term commitments, the Commission evaluates whether the modification is a material change to the agreement. According to SBC, "a change in the terms and conditions under which a deposit could be required would not be material" because such change does not fall into the various categories the Commission has identified in previous proceedings previously as material changes and which are critical to the customer's decision-making process. Direct Case, pp.35-36. As discussed, the requirement to post deposits valued in the tens of millions of dollars and which tie up a carrier's working capital may well play an important role in the customer's decision about whether to subscribe to a term plan and the length of such plan. Although the proposed change is not an increase to a particular rate element, it could cause customers to post huge deposits in cash or bonds, will increase the cost of obtaining access services because their overall cost of capital will increase, and may jeopardize pre-existing financial agreements. Thus, despite SBC's rationalizations, the change must be considered "material."

SBC asserts that it has substantial cause to modify its tariff even if the modification is found to be material. **The** first part of the substantial cause test requires the examination of "the carrier's explanation of the factors necessitating the desired changes at that particular time."[8] SBC claims that it has "establishe[d] the business need for its tariff revisions. And, as SBC's term plans show, SBC has offered no guarantee

[8] ***In the Matter of RCA American Communications, Inc.,*** 86 FCC 2d 1197, 1201-02 (1981) (***RCA American Order).***

that the general terms and conditions of its tariffs would not change." Direct Case, pp. 36-37. **As** discussed above, SBC has not demonstrated that its current tariff provisions, if properly enforced, would not adequately protect it from an increase in uncollectibles which result from the economic recession and accounting scandals. Further, SBC's 2001 uncollectibles were less than 0.5 percent of its interstate access revenues, and it is earning a 22.36 percent rate of return. Such statistics cannot be found to substantiate a claim of "significant harm" to SBC.

The second part of the substantial cause test requires an evaluation of "the position of the relying customer in evaluating the reasonableness of the change." ***RCA American Order,*** 1201-02. SBC's assertion that "even if SBC's term plan customers had such an expectation [that the provisions would remain static], it would be far outweighed by SBC's need to protect itself from losses in the event a financially impaired carrier fails to pay its bills." Direct Case, p. 37. SBC seeks to expand the application of its deposit provision under the proposed criteria (e.g., insolvency, credit ratings below investment grade) without disclosing an estimate of the number of customers who would be required to post deposits. But for any customer, deposits equivalent to one or two months of interstate access charges are hardly ***de minimis,*** with little financial impact on the customer. Given SBC's dominant position in the provision of access services, the customer cannot simply switch to another service provider. The customer has no alternative but to immediately post a substantial deposit, which will be both unexpected and costly. SBC has not shown that the impact of business cycle fluctuations and the fraud-related bankruptcies on it is so severe as to warrant the imposition of substantial deposits on its term plan customers – and it is doubtful in the extreme that SBC could

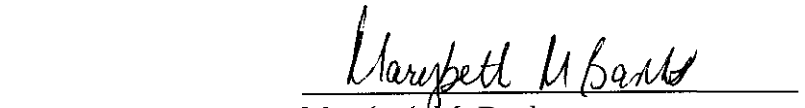
make such a showing given its healthy rates of return under price caps. Thus, SBC has failed to justify this material change to its term plan customers.

III. CONCLUSION

For the above reasons, Sprint urges the Commission to find that SBC has failed to demonstrate in its Direct Case that its proposed deposit requirements are not unjust and unreasonable, in violation of Section 201(b) of the Act; are not unjustly discriminatory, in violation of 202(a) of the Act; and are not impermissibly vague, in violation of Section 61.2 and 61.54(j) of the Commission's Rules.

Respectfully submitted,

SPRINT CORPORATION



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November 14,2002

EXHIBIT 1

SBC'S REVENUE BY TARIFF-FILING ENTITY

(Excludes USF and CL **Support)**

Year	**Ameritech**	**Southwestern**	**SNET**	**Nevada**	**Pacific**	SBC Total
1990	$2,181,102	$1,818,672	$361,143	$58,057	$1,593,156	$6,012,130
1991	$2,166,792	$1,775,654	$340,214	$53,498	$1,560,902	$5,897,060
1992	$2,209,498	$1,812,127	$352,358	$53,726	$1,572,308	$6,000,017
1993	$2,295,584	$1,956,416	$366,395	$54,894	$1,644,999	$6,318,288
1994	$2,388,126	$2,038,857	$374,679	$53,552	$1,690,522	$6,545,736
1995	$2,417,686	$2,140,904	$383,093	$53,379	$1,737,949	$6,733,011
1996	$2,521,373	$2,206,153	$398,748	$56,805	$1,821,225	$7,004,304
1997	$2,441,779	$2,313,944	$393,373	$60,131	$1,853,892	$7,063,119
1998	$2,723,132	$2,460,915	$405,261	$62,854	$2,042,200	$7,694,362
1999	$2,923,969	$2,617,828	$418,716	$63,700	$2,229,091	$8,253,304
2000	$3,118,749	$2,868,619	$472,083	$71,984	$2,429,125	$8,960,560
2001	$3,155,350	$3,199,009	$537,742	$76,705	$2,698,106	$9,666,912

EXHIBIT 2

PUBLIC DEBT NEWS

Department of the Treasury • Bureau of the Public Debt • Washington, DC 20239

TREASURY SECURITY AUCTION RESULTS
BUREAU OF THE PUBLIC DEBT · WASHINGTON DC

FOR IMMEDIATE RELEASE
November **12, 2002**

CONTACT: Office of Financing .
202-691-3550

RESULTS OF TREASURY'S AUCTION OF 26-WEEK BILLS

Term:	**182-Day** Bill
Issue Date:	November **14, 2002**
Maturity Date:	May **15, 2003**
CUSIP Number:	**912795MM0**

High Rate: **1.225%** Investment Rate **1/: 1.249%** Price: **99 381**

All noncompetitive and successful competitive bidders were awarded securities at the high rate. Tenders at the high discount rate were allotted **64.42%**. All tenders at lower rates were accepted in full.

AMOUNTS TENDERED AND ACCEPTED (in thousands)

Tender Type	Tendered	Accepted
Competitive	$ **30,497,187**	$ **14,953,787**
Noncompetitive	**896,416**	**896,416**
FIMA (noncompetitive)	**150,000**	**150.000**
SUBTOTAL	**31,543,603**	**16,000,203** 2/
Federal Reserve	**5,812,574**	**5,812,574**
TOTAL	$ **37,356,177**	$ **21,812,777**

Median rate **1.210%: 50%** of the amount of accepted competitive tenders was tendered at or below that rate. Low rate **1.170%: 5%** of the amount of accepted competitive tenders was tendered at or below that rate.

Bid-to-Cover Ratio = **31,543,603 / 16,000,203 = 1.97**

1/ Equivalent coupon-issue yield.
2/ Awards to TREASURY DIRECT = **$716,999,000**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition to Direct Case, WC Docket No. 02-319, was delivered by hand, electronic mail, or First Class **U.S.** Mail, postage prepaid, on this 14th day of November 2002 to the parties listed below.

Sharon Kirby

VIA HAND DELIVERY

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